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Supreme Court of the United States

OCTOBER TERM, 1941

No. 534

A. B. HALL,
Petitioner.

Vs.

STATE OF GEORGIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA AND BRIEF IN SUPPORT THEREOF.

WILLIAMS PTG. CO.-ATLANTA

In re: Hall vs.
State of Georgia.

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Submitted—

C. G. BATTLE

Aug. 14, 1941.

Supreme Court of the United States

OCTOBER TERM, 1941

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA AND BRIEF IN SUPPORT THEREOF.

To the Honorable Harlan F. Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner Respectfully shows:

This is a petition for a writ of Certiorari to the Court of Appeals of the State of Georgia, to review a decision of the Court of Appeals of the State of Georgia, dated February 11th, 1941, (R. 46), adhered to on motion for rehearing on March 27th, 1941, with

opinion, and which was entered as a final judgment on June 18th, 1941, (R. 53 to 64). Application for certiorari to the Supreme Court of Georgia, and denial thereof on June 18th, 1941, without opinion, thus affirming a final verdict and judgment in the case of State of Georgia vs. A. B. Hall, and tried in the Criminal Court of Fulton County, Georgia, which had been denied on Certiorari to the Superior Court of Fulton County, Georgia; affirmed by the Court of Appeals of Georgia; adhered to on motion for rehearing by said Court of Appeals of Georgia; and denied on Certiorari to the Supreme Court of Georgia, and entered as a final judgment in the Court of Appeals of the State of Georgia on June 18th, 1941—(R. 64). The appeal throughout being brought by petitioner against the Respondent herein.

I

SUMMARY STATEMENT OF MATTERS INVOLVED.

This petitioner was tried in the Criminal Court of Fulton County, Georgia, on February 6th, 1940, upon an accusation which charged him with the offense of a misdemeanor. He was found guilty by the jury and sentenced by the Court to serve a term of twelve (12) months on the public works of Fulton County, Georgia—(R. 15). He carried his conviction to the Superior Court of Fulton County, Georgia, by writ of Certiorari, alleging that he was erroneously convicted, assigning both general and special grounds and naming the State of Georgia as Defendant, (R. 5 to 15).

He charged and alleged in his petition that the verdict and judgment should be reversed on the

grounds therein stated, (R. 5-13). Especially did he allege that his conviction was illegal, because the trial court (judge) refused to allow him the right to qualify the jurors as to their impartiality so as to obtain an impartial jury to try his case. That the Court's refusal to allow and permit him to ask specific questions, such as would tend, if answered in the affirmative, to disqualify them, or any of them, as jurors, was such error as to authorize, if not demand another trial.

Petitioner shows, in view of the foregoing, that it being a question as to the construction of a rule or principle of law which was considered, and which was vital to his right to a fair and impartial trial by an impartial jury as contemplated by the Constituion of the United States, Amendment six (6) thereof, that to refuse to allow him to so question the jurors to obtain such impartial jury was reversible error—(Motion for rehearing 57).

Petitioner further charged error on the part of the trial court in allowing in evidence, over objections, a certain indictment concerning petitioner's conviction or plea of guilty in the Superior Court of Fulton County in 1937, for the offense of violating the lottery laws—this ruling was alleged to be prejudicial to petitioner, (R. 10).

The Court of Appeals of Georgia, directly and on motion for re-hearing, with opinion, (R. 61), affirmed the ruling of trial Court; and Superior Court; thus holding:

> That the trial Court did not err in refusing, as a proper challenge to the qualifications of jurors, to allow the defendant to qualify the jurors as to whether they had contributed to the lottery in-

vestigation held in Fulton County, and whether they had been witnesses before the Grand Jury as to the operation of the lottery known as the number game in Fulton County, Georgia. Such contributions or appearances do not ipso facto inherently affect the qualifications as jurors.

And by so holding, denied petitioner's rights to a fair and impartial trial by an impartial jury as guaranteed to him under the 6th amendment to the Federal Constitution which provided among other things:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury, (R. 46).

II

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The questions involved are of general and public interest. They arise by reason of the denial of a right to petitioner under a provision of the Constitution of the United States as declared in the 6th amendment thereof, which provides, among other things:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial Jury."

By action of the Supreme Court, the Court of Appeals of Georgia in this case, is the highest Apellate Court of the State to which the case could be taken, hence the Writ is properly directed to that Court. The Supreme Court denying an application for Certorari in the case—rendering no opinion, the final judgment of the Court of Appeals was a judgment by the highest

Appellate Court in the State to which said case could be taken;

Mallett vs. N. C., 180 U. S., page 589 to 592;
Leigh vs. Green, 193 U. S., page 79;
French vs. Taylor, 190 U. S., page 274;
Bacon vs. Texas, 163 U. S., page 207.

The Court of Appeals of Georgia, under the provisions of the Constitutional amendment creating that Court had authority to render a judgment passing upon the Constitutional questions raised by the record in this case:

Acts of the General Assembly of Georgia, July 31st, 1906, and ratified October 3rd, 1906.

The decision of the Court of Appeals affirming the decision of the lower Court denied to petitioner his right to the Constitutional guaranty—as provided in the 6th amendment to the Constitution of the United States, which provides:

"A trial by an impartial Jury." Therefore, this Court has jurisdiction to review the decision of the Court of Appeals of Georgia.

The Court held, in effect, that it was not error for the trial Court to refuse to allow the defendant, (petitioner) to question the Jurors by asking other specific questions than the voir dire questions, and in refusing to allow defendant to qualify the Jury as specifically charged in his petition under a specific ground as therein charged and alleged—(R. 7 to 8).

This question appears in the records; was decided by the Court of Appeals of Georgia, (R. 53-61), and such question was clearly and necessarily involved in

the case so that the case could not have been determined without deciding such question;

Sayward vs. Denny, 158 U. S., page 180—Court passed on Federal question by clear and necessary intentment;

Powell vs. Brunswick, etc., 150 U. S., page 400 to 433;

Also *Yazoo & Miss. Valley Ry. Co. vs. Adams*, 180 U. S., page 1.

This question was raised in the petition for Certiorari to the Superior Court, (R. 5).

The judgment under review is in direct conflict with the opinion of the Supreme Court of Georgia in the cases of:

Thompson vs. State of Georgia, 109 Georgia Reports, page 272;

Humphries vs. State, 100 Ga. Reports, page 260;

And *Wells vs. State*, 102 Ga. Reports, page 659;

And also many decisions of other States on the same questions.

Therefore, petitioner believes that an authoritative decision from this Court settling the conflict is necessary.

Petitioner further believes, that the Court's refusal to allow him to offer proof by asking questions, which, in their nature, were such questions if answered in the affirmative as would tend to disqualify the jury, would be error, and a denial of his Constitutional rights as herein set forth;

Shettel vs. U. S., 113 Federal, 2nd, page 36, notes 6 and 7.

III

FEDERAL QUESTIONS ON WHICH ERROR IS ASSIGNED.

The judgment of the Court of Appeals of Georgia, denying petitioner the right to qualify the Jurors as to whether they had contributed to the lottery investigation held in Fulton County, and whether they had been witnesses before the Grand Jury as to the operation of the lottery known as the number game in Fulton County, Georgia, is a violation of the rights guaranteed to him under the "fair and impartial Jury" provision of the Constitution of the United States—6th amendment thereto.

The Court's affirmance of the decision of the lower Court in allowing other independent and unrelated transactions to be introduced in evidence on the trial of the case was error; and was set up and decided by the Court of Appeals both on direct writ of error, and motion for rehearing to that Court in this case.

Petitioner hereby furnishes a certified copy of the entire record of said case in the Court of Appeals of Georgia, and is made a part hereof by reference thereto.

WHEREFORE, your petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of the State of Georgia, commanding said Court to certify and send to this Court, a full and complete transcript of the record and of the proceedings of the said Court of Appeals of Georgia had in the case numbered and entitled on its docket No. 28280, A. B. Hall, plaintiff in error, vs. State of Georgia, defendant in error, to the end that his cause may be reviewed and determined

by this Honorable Court as provided for by the Statutes of the United States; and that the order and judgment of the Court of Appeals of Georgia be reversed by this Court, and for such other and further relief as to this Court may seem proper; and your petitioner will ever pray.

Dated, Atlanta, Georgia, August 20, 1941.

A. B. HALL

By W. R. BENTLEY

AUGUSTUS M. ROAN

Counsel for Petitioner.